BEFORE THE KANSAS WORKERS COMPENSATION BOARD

LIDIA RODRIGUEZ	)	
Claimant	)	
v.	)	
	)	Docket No. 1,060,280
ISS FACILITY SERVICES HOLDING, INC.	)	
Respondent	)	
and	)	
	)	
LIBERTY MUTUAL FIRE INSURANCE CO.	)	
Insurance Carrier	)	

ORDER

Claimant requests review of the September 19, 2014, Award by Administrative Law Judge (ALJ) Kenneth J. Hursh. The Board heard oral argument on January 21, 2015.

APPEARANCES

C. Albert Herdoiza, of Kansas City, Kansas, appeared for claimant. Stephanie Warmund, of Kansas City, Missouri, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The Board has considered the entire record and adopted the stipulations listed in the Award.

ISSUES

The ALJ found claimant: (1) is not permanently totally disabled; (2) is not entitled to work disability benefits; (3) sustained a 10 percent permanent functional impairment to the whole body for the lumbar spine and a 20 percent permanent whole body functional impairment for psychological injury, for an aggregate permanent functional impairment of 28 percent to the body as a whole; and (4) is not entitled to future medical treatment.

Claimant argues she is permanently and totally disabled or is entitled to permanent partial disability (PPD) benefits based on work disability. Claimant also maintains she is

entitled to future medical treatment.[1] Claimant contends the ALJ should have considered the reports of Dr. Fotopoulos and the testimony of Maria Rodriguez and Jesus Rodriguez.

Respondent contends the ALJ's Award should be affirmed.

The issues are:

1. What is the nature and extent of claimant's disability?

2. Is claimant entitled to future medical treatment?

3. Should the ALJ have considered the reports of Dr. Fotopoulos and the testimony of Maria Rodriguez and Jesus Rodriguez?

FINDINGS OF FACT

Claimant lives in Kansas City, Kansas, and was born in Mexico on March 21, 1970. She attended school in Mexico through the sixth grade and has no further formal education or training. Claimant worked as a housekeeper for respondent for five years. According to claimant, she experienced no problems performing her job before her accidental injury.

On July 5, 2011, claimant was pushing a wheeled trash container when one of the wheels struck a rock, causing the container to lean forward. Claimant caught the trash receptacle and prevented it from falling, but injured her lower back. The following day, respondent sent claimant to Concentra for medical treatment. The Concentra physician prescribed physical therapy, which claimant completed on August 12, 2011. She continued to perform her regular duty work for respondent.

Concentra referred claimant to James S. Zarr, M.D., board certified in physical medicine and rehabilitation, for evaluation of her low her back pain. Claimant met with Dr. Zarr on February 13, 2012. He testified he found tenderness on palpation of claimant's low back. The doctor noted a lumbar MRI scan was unremarkable, with no evidence of a herniated disk. Dr. Zarr testified because claimant's MRI was normal, he did not recommend a surgical consultation. He did offer a referral to a pain management clinic. Dr. Zarr's diagnosis was persistent low back pain.

Dr. Zarr referred claimant to Kimber Eubanks, M.D., for lumbar epidural steroid injections. After the first injection, claimant had some relief of her pain. She returned to Dr. Eubanks, who administered a second injection. According to claimant, on March 15, 2012, while receiving the second epidural injection, she felt a strong pain at the injection site.

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[1] Although claimant initially raised the issue of claimant's entitlement to unauthorized medical compensation, claimant's counsel stated at oral argument there is no such issue.

After the second injection, claimant asserted the pain increased in her lower back, legs and up her spine.

Claimant returned to Dr. Zarr on March 16, 2012, and told him about her pain after the second injection. According to claimant, Dr. Zarr told her the pain was normal. Dr. Zarr recommended work hardening, followed by a functional capacity evaluation (FCE). Dr. Zarr anticipated claimant would be at maximum medical improvement (MMI) after work hardening and the FCE.

Claimant testified that on Saturday, March 17, 2012, her back pain worsened, and she was taken to the emergency department at the University of Kansas Medical Center (KUMC). Claimant said the hospital would not treat her because they had no medical records documenting her previous treatment. However, KUMC provided claimant with morphine. Claimant's pain did not improve and she began having pain in the back of her head. Claimant called Dr. Eubanks' office on Monday, March 19, 2012, but according to claimant, the doctor's office would not help her. Claimant then scheduled an appointment with Dr. Zarr on Wednesday, March 21, 2012.

At the March 21, 2012, appointment, claimant presented with symptoms of back pain, headache, dizziness and balance problems. Dr. Zarr was concerned claimant had a leakage of spinal fluid at the steroid injection puncture site. Dr. Zarr provided claimant with pain medication and referred her back to the pain management clinic for a blood patch to stop any spinal fluid leakage.

Claimant testified that after Dr. Eubanks applied the blood patch, she experienced some improvement of her headaches. However, a few hours later, claimant lost consciousness and was taken by ambulance to KUMC, where she was again provided morphine. Diagnostic testing was performed. Claimant was admitted to KUMC, where she was under observation for six days. After she was discharged from the hospital, claimant's pain improved and she was provided a crutch to help support herself. According to claimant, she has used the crutch every day since.

Gary S. Gronseth, M.D., a board certified neurologist, evaluated claimant when she was a patient at KUMC on March 22 and March 30, 2012. A lumbar MRI scan conducted on March 22, 2012, revealed a suggestion of calcification within the posteriolateral right thecal sac at L5-S1 that suggested chronic arachnoiditis. Dr. Gronseth testified that following the application of the blood patch, claimant's condition improved, her headaches resolved and her back pain decreased.

Dr. Gronseth diagnosed claimant with arachnoiditis, an inflammation of the lining of the nerve roots, spinal cord and brain. Dr. Gronseth testified claimant's second epidural injection pierced the thecal sac, causing claimant's headaches. The doctor explained that air was introduced into the thecal sac, and the only way that could happen is if the sac was penetrated by the needle. Some liquid steroid was also injected into the thecal sac.

According to Dr. Gronseth, some patients are able to tolerate such an event, while others develop acute inflammation and chronic arachnoiditis. Dr. Gronseth testified there is no cure for arachnoiditis and once the inflammation commences, it tends to persist chronically. The chronic inflammation can cause scarring and the formation of fibrous bands that may put pressure on the nerves, causing weakness and possible paraplegia.

The March 22, 2012, MRI scan showed "clumping" of the nerve roots, which Dr. Gronseth testified is a common finding with arachnoiditis. Claimant's complaints of leg weakness and of her legs giving way are consistent with arachnoiditis. The hospital prescribed a cane to improve claimant's balance because of her left leg pain and weakness. Dr. Gronseth testified that, given the weakness in claimant's left leg, it would have been difficult for her to return to work without the cane.

In Dr. Gronseth's opinion, within reasonable medical certainty, claimant has arachnoiditis caused by the second steroid injection. Given claimant's symptoms, Dr. Gronseth testified it would be difficult or unlikely she would be able to find and perform work. According to Dr. Gronseth, arachnoiditis can cause a wide range of symptoms--including pain, numbness and weakness--which commonly vary in severity. The only treatment is pain medication and steroids to blunt the pain and inflammation. Dr. Gronseth testified pain from arachnoiditis is treated like any other pain. Physical therapy can be helpful, as can pain medication, including Lyrica, opiates, nonsteroidal anti-inflammatory medication, and steroids.

In Dr. Gronseth's opinion, claimant's condition will likely persist for the rest of her life. Although some patients spontaneously improve, not many do. Dr. Gronseth testified he has seen patients with chronic arachnoiditis become depressed.

Dr. Zarr testified he again saw claimant on April 18, 2012, for continuing complaints of severe back pain. Dr. Zarr recommended a conditioning program, followed by work hardening and an FCE. However, before proceeding with the recommended treatment, Dr. Zarr suggested a second medical opinion be obtained because claimant's pain was more than expected from the nature of her trauma. Respondent authorized a consultation with Constantine Fotopoulos, M.D.

Dr. Zarr testified claimant commenced her treatment regimen, but could not continue due to increased pain. When he saw her on July 24, 2012, he recommended claimant discontinue therapy and proceed with the FCE. In his July 24, 2012, notes, Dr. Zarr did not mention claimant's arachnoiditis. Dr. Zarr prescribed Tramadol.

Jared C. Hanson is a certified athletic trainer at Athletic and Rehabilitation Center (ARC) who conducted claimant's August 3, 2012, FCE. Mr. Hanson testified a complete assessment of claimant's lifting abilities could not be conducted because of claimant's complaints of lower back pain. According to Mr. Hanson, during claimant's attempts to lift, she demonstrated facial grimacing, groaning and other pain behaviors. Claimant

discontinued attempts to perform the activities required by the FCE due to increased lower back and leg pain.

In Mr. Hanson's opinion, claimant failed to give maximal effort in the FCE because claimant failed four out of the seven criteria for hand strength assessment; claimant showed likely symptom magnification; claimant's frequent and extreme overt pain behaviors, such as grimacing, groaning, rubbing her back and other parts of her body during the assessment; and claimant demonstrated 5 out of 5 categories on Waddell's testing.

Mr. Hanson testified he did not know claimant had been diagnosed with arachnoiditis. Claimant told Mr. Hanson she was in a lot of pain the entire time she participated in the FCE. Mr. Hanson did not consider claimant's pain in his evaluation.

Dr. Zarr testified he read the summary of the FCE, but did not read the report itself. The FCE was reported to be invalid, and therefore, according to Dr. Zarr, it was not helpful. Based on claimant's effort, the FCE showed she is able to perform sedentary work.

On August 8, 2012, Dr. Zarr released claimant from his care without permanent restrictions. Dr. Zarr asserted all his findings on physical examination were subjective. Dr. Zarr reviewed the KUMC records, which he opined revealed conflicting conclusions regarding the arachnoiditis diagnosis. Dr. Zarr found those records did not provide sufficient information to support the diagnosis of arachnoiditis.

Dr. Zarr admitted he was not as familiar with arachnoiditis as some other physicians. Although he was not convinced claimant had arachnoiditis, he admitted he is not an expert regarding that condition. Dr. Zarr testified he did not believe claimant had arachnoiditis because her blood testing revealed a normal sedimentation rate and a normal level of C Reactive Protein. Dr. Zarr did not agree there was any objective evidence of arachnoiditis. Dr. Zarr asserted claimant's lumbar MRI performed at KUMC revealed no objective finding supporting the presence of arachnoiditis.

After her release by Dr. Zarr, claimant performed her regular job duties, although she testified she encountered difficulty and experienced pain. Claimant worked for five months after her last visit with Dr. Zarr.

At the request of claimant's counsel, Fernando Egea, M.D., board certified in neurology and psychiatry, evaluated claimant on September 12, 2012, and again on March 25, 2013. Dr. Egea conducted neurological and psychiatric examinations.

From a physical standpoint, Dr. Egea diagnosed traumatic myofascitis with myofascial pain syndrome in the cervicothoracic spine; traumatic lumbar myofascitis with myofascial pain syndrome, with radiculopathy; and chronic arachnoiditis of the lumbar spinal cord. In Dr. Egea's opinion, claimant's incident of July 5, 2011, was the prevailing factor in causing her physical injuries.

Dr. Egea testified claimant had acute arachnoiditis and 90 to 100 percent of acute arachnoiditis cases develop into chronic arachnoiditis. Chronic arachnoiditis has no cure; it causes adhesions in the nerves in the spine; interferes with motion of the legs; and irritates the spinal nerve roots. Arachnoiditis can be extremely painful, causing pain in the spine and both lower extremities. In Dr. Egea's opinion, claimant's arachnoiditis was produced by the second epidural steroid injection.

From a psychiatric perspective, Dr. Egea opined claimant's injuries caused an adjustment disorder with depressive mood. According to Dr. Egea, claimant's depression was triggered by the complications following the second epidural injection; symptoms of pain with activity, with no probable cure; concerns about her ability to continue working; and concerns about engaging in daily activities. Dr. Egea identified no history of pre-injury neurological, psychiatric, psychological or emotional problems.

Using the AMA *Guides*,[2] Dr. Egea opined claimant sustained a 10 percent functional impairment to the whole body based on DRE Lumbosacral Category III, and a 5 percent whole body functional impairment based on DRE Cervicothoracic Category II. In Dr. Egea's opinion, claimant sustained psychological impairment of function of 20 percent to the body as a whole. Dr. Egea testified the prevailing factor for claimant's physical and psychological injuries, her need for treatment and her disability or impairment was the July 5, 2011, accident.

Dr. Egea imposed permanent restrictions of no lifting over 20 pounds; no frequent lifting over ten pounds; and no frequent bending, turning, twisting, stooping, crawling, squatting, crouching, stair-climbing or kneeling.

Dr. Egea testified claimant would benefit from future pain management. He also recommended psychological treatment with a Spanish speaking psychiatrist or psychologist. Dr. Egea opined from a physical standpoint, claimant's prognosis is not good. Chronic arachnoiditis is a permanent condition, and claimant will need EMG/nerve conduction studies to monitor her nerve function. Claimant's legs may become paralyzed, in which case a wheelchair may be required. According to Dr. Egea, paralysis is common with chronic arachoiditis. Based on claimant's physical condition, Dr. Egea testified claimant will not be able to work because of her chronic low back pain, radiating into her legs, caused by the arachnoiditis, thus making walking and standing difficult.

Dr. Egea testified he reviewed Mr. Dreiling's list of claimant's job tasks. Dr. Egea testified claimant cannot perform any of the seven tasks because they exceed his restrictions. Dr. Egea testified claimant is unemployable due to her permanent physical and

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[2] American Medical Association, *Guides to the Evaluation of Permanent Impairment* (4th ed.). All references are based upon the fourth edition of the AMA *Guides* unless otherwise noted.

mental injuries. Dr. Egea testified he does not believe claimant can perform any type of employment.

In an October 1, 2012, report, Dr. Zarr rated claimant's permanent functional impairment at 2 percent to whole body. Dr. Zarr testified he did not base his rating on the AMA *Guides*, but if he did, the rating would be the same. According Dr. Zarr, the AMA *Guides* allow him to use his judgment in rating permanent impairment. According to Dr. Zarr, claimant falls between DRE Category I and Category II, resulting in impairment in the range of 0 to 5 percent. In Dr. Zarr's opinion, claimant will not need any future medical treatment. He testified he reviewed the list of seven job tasks prepared by Mr. Dreiling and opined claimant can perform all seven tasks. Dr. Zarr testified he reviewed the list of nine work tasks described by Mr. Cordray and claimant can perform all nine tasks.

At the request of the ALJ, Terrance Pratt, M.D., performed a medical evaluation on January 8, 2013. Dr. Pratt took a history, performed a physical examination and reviewed medical records. According to Dr. Pratt, claimant had low back pain with degenerative disc disease, reported arachnoiditis and a history of depression. In Dr. Pratt's opinion, claimant made inappropriate responses in the physical examination.

Dr. Pratt stated claimant had palpable tenderness in the lumbosacral, thoracolumbar and cervical regions, with 5 out of 5 inappropriate responses on Waddell's testing. Cervical and lumbosacral active range of motion was pain limited. Dr. Pratt did not find claimant sustained permanent functional impairment in her cervicothoracic and thoracolumbar spine.

Regarding claimant's lumbosacral symptoms, Dr. Pratt stated she had preexisting multilevel degenerative changes, and after treatment for her lumbosacral complaints, she developed arachnoiditis. Dr. Pratt found claimant fell within DRE Category III, for a 10 percent whole person functional impairment.

Claimant was seen by Concentra physician Judith L. Tharp, M.D. on January 31, 2013. Dr. Tharp noted claimant's pain was severe and aggravated by all movements. Claimant appeared to be in fairly acute distress; had an antalgic, halting gait; used a cane; and was in tears most of the time. Dr. Tharp's impression was acute low back pain with bilateral lumbar radiculopathy. She imposed work restrictions of no lifting over five pounds; no pushing or pulling over 20 pounds; no bending, squatting or kneeling; no prolonged standing or walking longer than tolerated; and should sit at least 25 percent of the time. Dr. Tharp recommended physical therapy.

Claimant attempted to return to work after Dr. Tharp's examination, but respondent had no work within Dr. Tharp's restrictions. Claimant thereafter followed up with respondent about returning to work, but claimant received no return call or offer to return to work.

Claimant returned to Dr. Zarr in February 2013. Dr. Zarr did not examine her physically, and he told claimant her problems were psychological, not physical.

Dr. Egea testified that when he saw claimant a second time on March 25, 2013, she was more depressed and showed decreased psychomotor activity. According to Dr. Egea, his findings on physical examination did not change significantly.

Alicia Cabrera, Ph.D., a psychologist, evaluated claimant at the request of the ALJ on May 21, 2013. Dr. Cabrera concluded claimant was very depressed and unable to cope with her current circumstances related to her back pain. Claimant had suicidal thoughts or ideation, but denied having attempted suicide.

In Dr. Cabrera's opinion, claimant tended to exaggerate her symptoms. After she had the second epidural injection, and she realized her condition may be permanent, her depression began. Dr. Cabrera opined claimant could benefit from a proper explanation of her prognosis, therapy once or twice a week, antidepressant medication and monitoring by a psychiatrist.

Michael J. Dreiling, a vocational consultant, performed a vocational evaluation at the request of claimant's attorney on July 10, 2013. Mr. Dreiling identified seven work tasks claimant performed for the five years before her injury. He testified claimant had no typing ability, no computer skills, no driver's license, and cannot read or write English. When injured, claimant was earning $8.30 per hour, 30 to 32 hours per week, with no fringe benefits. Mr. Dreiling opined claimant relied on good physical functioning abilities to work in the labor market. She had no transferrable job skills.

Mr. Dreiling testified, within reasonable vocational certainty, as a result of claimant's July 5, 2011, accidental injury, claimant is not capable of returning to work in the open labor market. Mr. Dreiling opined claimant is essentially and realistically unemployable. Claimant's restrictions, depression, inability to speak English and her educational level, are alone sufficient factors to support the conclusion claimant is essentially and realistically unemployable.

Terry L. Cordray, a vocational rehabilitation counselor, evaluated claimant on October 31, 2013, at the request of respondent's attorney. Mr. Cordray identified nine work tasks claimant performed in the five years before her accidental injury. Mr. Cordray testified that following claimant's work injury, she returned to work for respondent. Accordingly, in Mr. Cordray's opinion, within a reasonable degree of vocational certainty, claimant is capable of working. Since claimant earned the same wages before and after her accident, Mr. Cordray believes she experiences no loss of wage earning capacity.

Mr. Cordray testified that between claimant's accidental injury and September 2, 2011, she worked for respondent full-time, performing regular duty. In Mr. Cordray's judgment, she is therefore employable and placeable in the competitive labor market on full-time, unrestricted duty. According to Mr. Cordray, claimant is employable even under Dr. Egea's restrictions. Mr. Cordray identified jobs claimant is capable of performing, including housekeeper, restaurant stocker, hospital stocker, buffet runner, and busser at a restaurant.

Mr. Cordray admitted he is unfamiliar with arachnoiditis.

Claimant testified she has taken no English classes, has not obtained a GED, does not have typing skills, has no computer experience, has no driver's license, cannot read or write English and only understands a little English.

Claimant testified she met with Alicia Cabrera, Ph.D., a Spanish-speaking psychologist, about her depression. Dr. Cabrera recommended claimant see a psychologist or take medication for her depression. Dr. Cabrera thinks claimant could improve if she had treatment.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2011 Supp. 44-501b states in part:

> (b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.
>
> (c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2011 Supp. 44-508(h) states:

> "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 2011 Supp. 44-510c(a)(2) provides:

> Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Expert evidence shall be required to prove permanent total disability.

A person is permanently and totally disabled when he or she is "essentially and realistically unemployable."[3]

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[3] *Wardlow v. ANR Freight Systems*, 19 Kan. App. 2d 110, 872 P.2d 299 (1993).

K.S.A. 2011 Supp. 44-510h(e) provides in relevant part:

> It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee . . . shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.

The Board finds the Award should be modified as specifically set forth below.

The Board agrees with the ALJ that claimant sustained a low back injury and a psychological injury directly traceable[4] to the July 5, 2011, accident. The Board also agrees claimant sustained permanent functional impairment of 10 percent to the whole body for the lumbar injury and 20 percent to the whole body for the psychological injury, for an aggregate permanent impairment of function of 28 percent to the whole person. However, in the opinion of the Board, claimant proved she is, on account of the injury, permanently and totally disabled from engaging in any type of substantial gainful employment. Claimant also overcame, with medical evidence, the presumption that respondent need not provide her with future medical treatment.

The preponderance of the credible evidence establishes, as noted by the ALJ, claimant developed arachnoiditis as a consequence of treatment she received for the accidental injury in this claim. Specifically, claimant's second epidural steroid injection pierced the thecal sac and thereby introduced steroid fluid and air into the sac. The testimony of Dr. Gronseth, Dr. Egea, and Dr. Pratt supports the conclusion that claimant sustained arachnoiditis as a result of the accident. The Board is not persuaded by Dr. Zarr's testimony on this issue.

Dr. Zarr is not a neurologist and arachnoiditis is a neurological condition. Dr. Gronseth and Dr. Egea are board certified neurologists and are, accordingly, better qualified to determine whether or not claimant contracted arachnoiditis and what symptoms that condition is likely to cause. Dr. Zarr admitted that acachnoiditis is outside his area of expertise. Mr. Hanson's conclusions are likewise of little credibility because he was not shown to be qualified in neurology and is not even a "health care provider" pursuant to K.S.A. 2011 Supp. 44- 508(j). Moreover, Mr. Hanson testified was unaware claimant had been

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[4] *See Love v. McDonald's Restaurant,* 13 Kan. App. 2d 397, Syl. ¶ 1, 771 P.2d 557, *rev. denied* 245 Kan. 784 (1989).

diagnosed with arachnoiditis, and he did not consider claimant's pain in arriving at his conclusions.

Claimant's "pain behaviors," "inappropriate responses," and her tendency to exaggerate her symptoms are noteworthy and are entitled to some weight. However, the preponderance of the credible evidence establishes that claimant's symptoms are characteristic of arachnoiditis and are consistent with that diagnosis. The testimony of Dr. Gronseth and Dr. Egea support the finding that claimant's complaints are valid, considering the nature of claimant's injury, and the symptoms arachnoiditis is likely to cause. Dr. Gronseth testified claimant's weakness and "giving way" of her lower extremities is consistent with his diagnosis. Dr. Egea testified arachnoiditis can cause severe pain in the spine and lower extremities.

Claimant was placed on stringent physical restrictions by Dr. Egea and Dr. Tharp. Dr. Gronseth, Dr. Egea and vocational witness Mike Dreiling all support the conclusion claimant is permanently totally disabled and is essentially and realistically unemployable. Dr. Gronseth testified it would difficult or unlikely claimant could find and perform work. Dr. Egea testified claimant is not able to work and is unemployable. Mr. Dreiling testified claimant is essentially and realistically unemployable.

The Board reverses the ALJ's finding regarding future medical treatment. Drs. Gronseth, Egea, Tharp and Cabrera indicate claimant will require future treatment, both physical and psychological/psychiatric in nature. Claimant's right to future medical treatment shall remain open, subject to application to and approval by the ALJ.

In light of the Board's decision regarding permanent total disability, the Board need not consider the issue of claimant's entitlement to PPD based on work disability. Also, the Board will not address whether the ALJ erred in not considering the records of Dr. Fotopoulos and in determining the weight to be accorded the testimony of claimant's spouse, Jesus Rodriguez, and daughter, Maria Rodriguez. Regardless of whether the records of Dr. Fotopolous are or are not considered, and regardless of the weight to be accorded the testimony of those lay witnesses, the Board's conclusions would remain the same.

CONCLUSIONS

1. Claimant is entitled to benefits based on permanent total disability, as specifically set forth in the "Award" section of this Order.

2. Claimant's right to future treatment, physical and psychological/psychiatric, shall remain open upon application to and approval by the ALJ.

3. The other issues raised are moot and will not be addressed by the Board.

AWARD

Claimant is entitled to permanent total disability compensation at the rate of $171.54 per week not to exceed $155,000.00 for a permanent total general body disability.

As of April 27, 2015, there is due and owing to claimant 198.86 weeks of permanent total disability compensation at the rate of $171.54 per week in the sum of $34,112.44, for a total due and owing of $34,112.44, which is ordered paid by respondent in one lump sum, less amounts previously paid. Thereafter, respondent is ordered to pay claimant the remaining balance of permanent total disability benefits in the amount of $120,887.56 at the rate of $171.54 per week not to exceed the $155,000 statutory cap, until fully paid or until further order from the Director.

WHEREFORE, the Board finds the Award of Administrative Law Judge Kenneth J. Hursh dated September 19, 2014, is modified as set forth in this Order.

IT IS SO ORDERED.

Dated this _____ day of April, 2015.

_____
BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

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Honorable Kenneth J. Hursh, Administrative Law Judge